IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 15TH DECEMBER 2006 / 24TH AGRAHAYANA 1928

OP.No. 23630 of 2001(K)

PETITIONER:

E.K. BALARAMAN, S/O. E.V.KUNHAPPAN, ERINGATHURUTHI HOUSE, P.O. KAIPAMANGALAM, KOORIKUZHY, TRICHUR DISTRICT-680 681.

BY ADV. SRI.P.N.RAVINDRAN

RESPONDENTS:

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1. NATIONAL PROJECTS CONSTRUCTION CORPORATION TIMITED, PLOT NO. 67-68. SECTOR 25, FARIDABAD, HARYANA-121 004, REP. BY CHAIRMAN & MANAGING DIRECTOR.

2. THE TRUST SECRETARY, NATIONAL PROJECTS CONSTRUCTION CORPORATION LIMITEDPLOT NO. 67-68. SECTOR 25, FARIDABAD, HARYANA-121 004.

3. UNIT OFFICER, NATIONAL PROJECTS CONSTRUCTION CORPORATION LIMITED, T.S.S.UNIT, G7, JAWAHAR NAGAR, THIRUVANANTHAPURAMPIN-695 041.

4. ADDITIONAL GENERAL MANAGER, NATIONAL PROJECTS CONSTRUCTION CORPORATION LIMITED, SECTOR OFFICE, MTP RAILWAY COMPOUND, GOVT. ESTATE, CHENNAI-600 002, TAMIL NADU.

BY ADV. SRI.K.L.NARASIMHAN
SRI.V.SANTHARAM

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 15/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF ORDER DT. 28-4-1999.

EXT.P2 ORDER DT. 9-4-1999.

EXT.P3 NO-DEMAND CERTIFICATE.

EXT.P3(a) NO-DEMAND CERTIFICATE.

EXT.P4 NOTICE DT. 29-4-1999.

EXT.P5 ORDER DT.29-4-1999.

RESPONDENTS' EXHIBITS:

EXT.R3(a) LETTER DATED 24-4-1999.

EXT.R3(b) LETTER DT.26-9-2001.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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O.P. No. 23630 of 2001

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Dated this, the 15th December, 2006.

J U D G M E N T

The petitioner retired from service as an Executive Engineer of the 1st respondent-Corporation on 15-4-1999. The petitioner proposed to apply for voluntary retirement in view of the circumstance that he was transferred to Agarthala unit from Kayamkulam. The transfer was on 13-2-1999. He applied for voluntary retirement on 15-4-1999. Along with the same, he applied for medical leave from 13-2-1999 to 30-4-1999. However, his application for voluntary retirement was accepted with effect from 15-4-1999 by Ext. P1. Now, the issues involved in this original petition are, (1) sustainability of recovery of an amount of Rs. 86,493/- from his gratuity, (2) recovery of an amount of Rs. 7,125/- from the additional notice pay and ex-gratia as penalty for not taking appropriate action for renewal of the sales tax registration as a result of which an amount of Rs. 14,250/- has been imposed on the Corporation as penalty by the sales tax authorities and (3) non-payment of arrears of D.A amounting to Rs. 4,500/- and (4) denial of medical leave for the period from 13-2-1999 to 15-4-1999.

2. The petitioner contends that by Ext. P9 order, an amount of Rs. 86,493/- has been deducted from his gratuity without stating any reasons. He submits that the said deduction was without any notice or opportunity to show cause against such deduction and therefore the same is patently illegal and unsustainable.

3. Regarding the recovery of an amount of Rs. 7,125/- from his additional notice pay and ex-gratia, he would submit that although, by Ext. P4 show cause notice, he and another employee were asked to show cause why the said amount of Rs. 14,250/-, which is the penalty paid by the 1st respondent to the sales tax authorities, should not be

recovered from the petitioner. When the petitioner filed reply to the same, the proceedings were dropped and thereafter no notice was issued or proceedings initiated against the petitioner for recovery of half of the said amount from the petitioner. As far as the question of arrears of D.A is concerned, in the counter affidavit submitted by the respondents, it has been admitted that an amount of Rs. 3,955/- is due to the petitioner as arrears of D.A. Petitioner's fourth contention is that the petitioner had filed an application for medical leave for the period from 13-2-1999 to 15-4-1999, which has been illegally converted into earned leave by Ext. P5 order and the same is not sustainable, although he had medical leave to his credit which was recommended by his immediate superior.

4. The respondents have filed a counter affidavit disputing the claims of the petitioner.

5. Regarding the first contention, against the recovery of an amount of Rs. 86,493/- by Ext. P9 communication, from the gratuity amounts due to the petitioner, the petitioner's contention is that in so far as the same has been done without issuing a notice or hearing the same is illegal and unsustainable. The petitioner would further contend that in Ext. P9, no reason whatsoever is also mentioned as to how or on what account they have decided to deduct the said amount from the petitioner's gratuity. On the assumption that apparently this is on account of theft of some materials belonging to the Company in September, 1993 from the Bangalore office of the 1st respondent-Corporation while the petitioner was working there, the petitioner gave reasons as to why the same also cannot be a ground for recovery from the petitioner since, going by Ext. P10 itself, it is clear that the petitioner was not responsible for the theft caused in the depot. It appears that in the opinion of the police, the same was not a theft at

all, but the same arose out of a dispute between the contractor and the sub-contractor who had undertaken certain works on behalf of the Bangalore unit of the Corporation. In any event, the petitioner submits that even assuming that it is in respect of that amount, no recovery could have been effected before the petitioner was given a notice and hearing on the same.

6. Although Ext. P9 which deducts the amount does not show as to on what account this amount is deducted, apparently taking a cue from Ext. P10, in the counter affidavit respondents 1, 2 and 4 tried to justify the deduction on the basis of the theft alleged to have been occurred in the Bangalore unit in September, 1993. But, I am not inclined to accept the contention of respondents 1, 2 and 4 in this regard. First of all, no proceedings have been initiated or at least nothing has been produced before me evidencing such proceedings to show that any action has been taken against the petitioner in respect of the alleged theft, which happened in 1993 when the petitioner was working in the Bangalore unit. Without any proceedings for fixing liability in respect of that amount on the petitioner, no steps could have been taken for recovery of such amounts from the petitioner's gratuity. Therefore, without any doubt, the recovery by Ext. P9 of an amount of Rs. 86,493/- from the gratuity of the petitioner is clearly illegal and unsustainable.

7. The second contention of the petitioner is against recovery of an amount of Rs. 7,125/- from his other benefits allegedly on the ground that the petitioner was liable for failure to file application for renewal of sales tax registration in time, consequent to which a penalty of Rs. 14,250/- was imposed on the Corporation, half of which is sought to be recovered by respondents 1, 2 and 4 from the retirement benefits of the petitioner. The contention of the petitioner

is that although, by Ext. P4 show cause notice, the petitioner as well as one Sri. P.S.N. Murthy, Accounts Clerk were directed to show cause why the amount of Rs. 14,250/- should not be recovered from them, on the petitioner filing explanation to that notice, further proceedings were dropped. Of course, the petitioner has not produced any documents to show that proceedings were in fact dropped and the respondents have denied that it has been dropped, in their counter affidavit. But, the respondents have not chosen to produce any documents to show that Ext. P4 notice has been followed up with an appropriate order fixing that liability on the petitioner or Sri. P.S.N. Murthy. Without any proper order fixing that liability on the petitioner, respondents 1, 2 and 4 cannot simply deduct half of that amount from the retirement benefits of the petitioner as has been done in Ext. P7. Respondents have not been able to place before me any material to show that Ext. P4 notice had culminated in fixation of liability in that regard on the petitioner. Therefore, Ext. P7 order by which an amount of Rs. 7125/- is sought to be recovered from the petitioner is also unsustainable.

8. Since the respondents themselves admit in their counter affidavit that the petitioner is entitled to arrears of D.A for the period from 1-1-1999 to 13-4-1999 amounting to Rs. 3,955/-, I need not labour much on this point except to record the fact that the respondents themselves admit that the said amount is payable to the petitioner.

9. Lastly, we come to the question of refusal of the respondents to grant the petitioner medical leave for the period from 13-2-1999 to 12-4-1999. Respondents contention in this regard is that as is evident from Ext. R3(a), the application for medical leave was not supported by any medical certificate to show that the petitioner was in fact

suffering from any disease or infirmity during the said period. Although the petitioner would assert that he was in fact medically incapacitated during that period, in so far as he has not been able to prove before me that his application was supported by a medical certificate, I am unable to countenance the petitioner's claim in this regard and therefore, I hold that Ext. P5 order by which the respondents were gracious enough to convert that period into earned leave cannot be questioned by the petitioner.

10. The result of the above discussion would be that Exts. P7, P8 and P9 shall stand quashed. It is declared that the deduction of amounts of Rs. 86,493/- and 7,125/- from the terminal benefits of the petitioner is illegal and unsustainable and the respondents are liable to make good the said amount to the petitioner. Respondents are also liable to pay to the petitioner arrears of D.A amounting to Rs. 3,955/- as admitted in their counter affidavit. All these amounts shall be paid to the petitioner within two months from the date of receipt of a copy of this judgment.

11. Counsel for the petitioner presses for an order directing the respondents to pay to the petitioner interest on these amounts. I am of opinion that the question as to whether the petitioner is entitled to interest or not depends on questions of fact as to whether the respondents have committed any culpable delay in paying the amounts in time, which can be ascertained only after taking evidence. I leave it open to the petitioner to agitate his claim for interest in appropriate proceedings if so advised.

12. Petitioner has got another claim that the respondents have not paid to the petitioner pension under the Employees Pension Scheme from 1999 onwards. Employees' pension is paid under the Employees Pension Scheme of the Employees Provident Fund

Organisation. In this respect, the only responsibility of the respondents is to forward the application of the petitioner to the Regional Provident Fund Commissioner, which the respondents state in their counter affidavit that has been forwarded to the Regional Provident Fund Commissioner on 26-9-2001. Petitioner would be free to pursue his claim for employee's pension before the Regional Provident Fund Commissioner in accordance with law.

The original petition is disposed of as above.

Sd/- S. Siri Jagan, Judge.

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